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 Attorneys for Construction Laborers Trust Funds for
 Southern California Administrative Company, LLC

UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

CONSTRUCTION LABORERS TRUST FUNDS]	CASE NUMBER
FOR SOUTHERN CALIFORNIA]	
ADMINISTRATIVE COMPANY, a Delaware]	CV-08-5726 SJO (VBKx)
limited liability company,]	
]	ORDER RE CONTEMPT
Plaintiff,]	
]	
vs.]	HEARING:
]	
]	DATE: NOVEMBER 30, 2009
WHITE'S EXCAVATING, INC., a]	TIME: 10:00 A.M.
California corporation; and]	PLACE: COURTROOM 1
DANN WHITE, an individual,]	312 No. Spring St.
]	Los Angeles, CA
Defendants.]	

I. FACTUAL BACKGROUND

1. This action was brought by Plaintiff, CONSTRUCTION
 LABORERS TRUST FUNDS FOR SOUTHERN CALIFORNIA ADMINISTRATIVE
 COMPANY, a Delaware limited liability company on behalf of
 LABORERS HEALTH AND WELFARE TRUST FUND FOR SOUTHERN CALIFORNIA,
 CONSTRUCTION LABORERS PENSION TRUST FOR SOUTHERN CALIFORNIA,
 CONSTRUCTION LABORERS VACATION TRUST FOR SOUTHERN CALIFORNIA,
 LABORERS TRAINING AND RE-TRAINING TRUST FUND FOR SOUTHERN

1 CALIFORNIA, FUND FOR CONSTRUCTION INDUSTRY ADVANCEMENT, CENTER FOR
2 CONTRACT COMPLIANCE and LABORERS CONTRACT ADMINISTRATION TRUST
3 FUND FOR SOUTHERN CALIFORNIA (collectively, "TRUST FUNDS"),
4 against Defendants, WHITE'S EXCAVATING, INC., ("EMPLOYER"); and
5 DANN WHITE, ("WHITE").

6 2. On January 28, 2009, the Court entered its Order
7 Granting Plaintiff's Motion for Default Judgment, Final Order for
8 Accounting and Order for Permanent Injunction ("Order") against
9 Defendants, EMPLOYER, and D. WHITE which requires the EMPLOYER to
10 produce its books and records to the TRUST FUNDS for an audit and
11 to comply with EMPLOYER'S reporting obligations to timely pay and
12 report contributions to the TRUST FUNDS, and Judgment and Judgment
13 Nunc Pro Tunc providing for the production of documents for the
14 audit and for compliance with the submission of reports was
15 entered by the Court on January 28, 2009 and February 13, 2009
16 (collectively "Judgment"). The Order and Judgment require
17 EMPLOYER to produce its books and records to the TRUST FUNDS for
18 and audit covering the period from September 2007 through date of
19 the audit.

20 3. On March 15, 2009, the Court's Judgment and Judgment
21 Nunc Pro Tunc were personally served on EMPLOYER and D. WHITE.
22 EMPLOYER and D. WHITE failed to comply with the Court's Order and
23 Judgment.

24 4. Upon application by Plaintiff for an Order To Show Cause
25 Re Contempt with regard to EMPLOYER and D. WHITE'S failure to obey
26 the Court's Order for Accounting, and Judgment, and with notice to
27 EMPLOYER, the Court issued an Order to Show Cause re Contempt and
28 set the contempt hearing for September 14, 2009. The Order to

1 Show Cause re Contempt was personally served on EMPLOYER and D.
2 WHITE on August 10, 2009. On September 14, 2009, D. WHITE failed
3 to appear at the hearing; however, the Court was advised that D.
4 WHITE was scheduling an audit with the TRUST FUNDS, and the
5 hearing was continued was continued to October 13, 2009. The
6 October 13, 2009 hearing was again continued to November 16, 2009,
7 to allow D. WHITE time to gather additional records for the audit.
8 On November 16, 2009, Plaintiff's counsel appeared for the
9 hearing, and no appearance was made by EMPLOYER, D. WHITE or by
10 any counsel for them. Plaintiff's counsel indicated to the Court
11 that although D. WHITE produced records; he has failed to fully
12 comply with the Court's Order and Judgment.

13
14 **II. FINDINGS**

15 1. EMPLOYER and WHITE were personally served with the
16 Court's Order and Judgment which required EMPLOYER'S compliance
17 with an audit by the TRUST FUNDS.

18 2. EMPLOYER and D. WHITE have failed to fully comply with
19 the Court's Order and Judgment.

20 3. EMPLOYER and D. WHITE were personally served with the
21 Court's Order to Show Cause re Contempt on August 10, 2009;
22 however, EMPLOYER and D. WHITE failed to appear for the hearings
23 set for September 14, 2009 and November 16, 2009.

24 4. EMPLOYER has not shown cause why they should not be held
25 in contempt for failing to obey the Court's Final Order for
26 Accounting.

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1 **III. CONCLUSIONS OF LAW**

2 1. Civil contempt occurs when a party fails to comply with
3 a court order after having notice of the order. General Signal
4 Corporation v. Donallco, Inc., 787 F.2d 1276, 1379 (9th Cir.
5 1986), United States v. Rycander, 714 F.2d 996, 1003 (9th Cir.
6 1983), cert. denied 467 U.S. 1209, 104 S.Ct. 2398, 81 L.Ed.2d 355
7 (1984).

8 2. District Courts have the power to punish disobedience to
9 court orders by both civil and criminal contempt. United States
10 v. Rose, 806 F.2d 931 (9th Cir. 1986).

11 EMPLOYER and D. WHITE were personally served with this
12 Court's Order for Accounting and Judgment, and have failed and
13 refused to obey the Court's Order. Further, EMPLOYER and D. WHITE
14 after notice and personal service of the Court's Order to Show
15 Cause re Contempt, have failed to appear before this Court to show
16 cause why they should not be held in contempt for their refusal to
17 obey the Court's Order. A corporation and its officers with full
18 knowledge of the Court's Order can be held liable for civil
19 contempt. Peterson v. Highland Music, Inc., 140 F.3d 1313, 1323-
20 24 (9th Cir.1998); 14 Cal.Jur.3d(Rev)Part 1, § 29, p.87.

21 The Court therefore finds that WHITES EXCAVATING, INC., and
22 DANN WHITE are in civil contempt for their refusal to obey the
23 Court's Order and Judgment for Accounting.

24
25 **III. ORDER RE CIVIL CONTEMPT**

26 Based upon the foregoing findings of fact and conclusions of
27 law and good cause appearing therefor,

28 / /

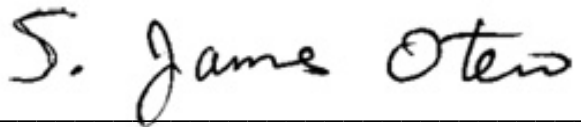
1 IT IS HEREBY ORDERED, ADJUDGED AND DECREED, that:

2 1. EMPLOYER and D. WHITE are in civil contempt for failing
3 and refusing to obey this Court's Order for Accounting and
4 Judgment entered January 28, 2009.

5 2. The hearing is set again for November 30, 2009, at 10:00
6 a.m., in Courtroom 1 of the United States District Court for the
7 Central District of California, located at 312 No. Spring Street,
8 Los Angeles, California 90012.

9 3. If EMPLOYER continues to fail to comply with this
10 Court's Final Order for Accounting, and fails to appear at the
11 continued hearing set for November 30, 2009, a bench warrant will
12 issue for the arrest of DANN WHITE.

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14 DATED: November 18, 2009


HON. S. JAMES OTERO, Judge of the
United States District Court
Central District of California

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20 PRESENTED BY:
21 REICH, ADELL & CVITAN
22 A Professional Law Corporation

23 By: /S/
24 MARSHA M. HAMASAKI
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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action; my business address is 3550 Wilshire Boulevard, Suite 2000, Los Angeles, California 90010-2421.

On **November 17, 2009**, I served the foregoing document described as **[PROPOSED] ORDER RE CONTEMPT** on the interested parties in this action by placing this action by United States first class mail and by placing

☐ the original ☒ a true copy thereof enclosed in a sealed envelope addressed as follows:

Dann White
White's Excavating, Inc.
9452 Telephone Road, #159
Ventura, CA 93004

☒ (By Mail) As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed on **November 17, 2009**, at Los Angeles, California.

☐ (By Personal Service) I caused such envelope to be delivered by hand to the offices of the addressee.

☒ (Federal Court) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

_____/S/
Virginia Alvarez